

ST 06-0107-GIL 04/27/2006 CERTIFICATE OF REGISTRATION

The Social Security Act establishes federal authority by which this Department may use social security numbers as the identification numbers required by the tax laws. See 42 USC 405 (c)(2)(C)(i). (This is a GIL.)

April 27, 2006

Dear Xxxxx:

This letter is in response to your letter dated March 30, 2005, in which you request information. We apologize for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Thank you for providing us with additional information regarding the Departments [sic] position on social security numbers. We found other references to Federal Law omitted in the correspondence submitted by your office that we would like to provide for your review.

Section 7 of the Privacy Act (found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)) provides that:

'It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.' Sec. 7(a)(1).

'Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.' Sec. 7(b).

Although the information you provided addresses a portion of the requirements stated above, not all of the information was provided. Please provide the missing information at your earliest convenience.

- We are interested in whether the disclosure is mandatory or voluntary and what uses will be made of the personal social security numbers of corporate officers, and for what purpose are the numbers requested?
- If personal social security numbers of corporate officers were provided, what protections and remedies does the Department offer those individuals in the event their social security numbers are subsequently used in an unauthorized manner resulting in those corporate officers suffering financial damages?
- Does the Department have a provision for waiving the SSN requirement under certain conditions or based upon the financial strength of the applicant or any other method of waiver?
- Has the Department ever waived this requirement for any corporation?

We hope you can understand that providing the requested personal information increases each individual's [sic] risk of becoming a victim of identity theft. Identity theft is reported to be the fastest growing category of crime in the U.S. and 8% of identity thefts result from authorized use of individual's information contained in government files.

We believe the U.S. Congress enacted language in the Privacy Act limiting usage of personal social security numbers to those connected with Social Security Administration. It is our belief that the Privacy Act as passed by Congress protects the right of the individual from being compelled to disclose their personal social security numbers. We believe further evidence of this intention of Congress is provided in Court rulings.

Title 5 of the United States Code Annotated 552(a), The Privacy Act, has been ruled on and a few examples of the court's determinations are as follows:

'Right of privacy is a personal right designed to protect persons from unwanted disclosure of personal information...' CNA Financial Corporation v. Local 743 D.C. 111, 1981, 515 F. Supp. 942 111.

The District Court in Delaware held that The Privacy Act:

'...was enacted for (the) purpose of curtailing the expanding use of social security number...and to eliminate the threat to individual privacy and confidentiality of information posed by common numerical identifiers " Doyle v. Wilson D.C., Del., 1982, 529 G. Supp. 1343

In the strongly worded Guideline and Regulations for Maintenance of Privacy and Protection of Records on Individuals it is stated:

(A)(I) 'It shall be unlawful...to deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.'

"The Privacy Act states:

'(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1000.00; and (B) the costs of the action together with reasonable attorney fees as determined by the court'

In Doyle v. Wilson the court states:

*'..assuming that plaintiffs refusal to disclose his social security number was a clearly established right, where defendants could not as reasonable persons have been aware of that right and could not have recognized that any effort to compel disclosure of number or deny plaintiff his refund violated federal law, damages against defendants were barred...'*Doyle v. Wilson, D.C., Del., 1982, 529 F. Supp. 1343.

Individuals must show they could not have been aware of the Privacy Act and could not have realized their actions were in violation of federal law to escape the \$1,000.00 penalty.

In declining to provide personal Social Security Numbers of corporate officers at this time, we do so believing the Privacy Act protects our right to decline. We recognize that the State of Illinois may have enacted legislation providing for the use of SSN's but, we believe the Privacy Act takes precedence in this matter.

The Company has operated since 1988 and regularly pays all taxes due. In addition, taxes due under this application are small by comparison with size of the Company, currently at \$620 million. The State has no demonstrable risk in this case. Finally, a SSN isn't necessary to collect unpaid taxes of the Company from the officers, if such a remote event were to occur.

As individuals we consider the request unnecessary and onerous in light of the facts as we understand them and desire to take all precautions to prevent identity theft and exercise our rights to protect ourselves from that eventuality. We sincerely hope you will understand our personal concerns in this matter.

You may contact me by telephone if convenient or email.

DEPARTMENT'S RESPONSE

We understand your concern. However, The Social Security Act, 42 USC 405 (c)(2)(C)(i) provides as follows:

It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the

identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

As is evident from the above, the Social Security Act establishes federal authority by which this Department may use social security numbers as the identification numbers required by the tax laws.

We are assuming that you are registering for the sales tax. Section 2a of the Retailers' Occupation Tax Act, 35 ILCS 120/2a, provides in part that "[a]pplication for a certificate of registration shall be made to the Department upon forms furnished by it. Each such application shall be signed and verified and shall state: (1) the name and social security number of the applicant; (2) the address of his principal place of business; (3) the address of the principal place of business from which he engages in the business of selling tangible personal property at retail in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which he engages in the business of selling tangible personal property at retail in this State; (4) the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under this Act; (5) in the case of a corporation, the name, title, and social security number of each corporate officer; (6) in the case of a limited liability company, the name, social security number, and FEIN number of each manager and member; and (7) such other information as the Department may reasonably require." As the requirement of listing corporate officers' social security numbers is statutory, the Department is without authority to administratively waive it.

Please note that the application's corporate officer information is confidential and is not made available to the public. The Illinois Department of Revenue only uses it for official purposes and it is a Class B misdemeanor for a Department employee to improperly divulge such information, 35 ILCS 120/11.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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